

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

SHUIFA YING,)
)
Plaintiff,)
)
v.) **CIVIL ACTION NO. 08-0514-KD-B**
)
CHINA CHEF, INC., SHI ZHONG OU,)
and LIMING HUANG,)
)
Defendants.)

ORDER

This action is before the court on the report and recommendation entered by United States Magistrate Judge Sonja F. Bivins on December 8, 2008 wherein Judge Bivins recommends that this case be dismissed at plaintiff's request (docs. 23, 30). The objection period has lapsed and no party has filed an objection. However, defendants filed their own motion to dismiss wherein they move the court to grant plaintiff's request because no objections have been filed during the objection period (doc. 32).

Magistrate Judge Bivins recommends dismissal of this action pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure. The Rule provides for voluntary dismissal by the plaintiff without order of the court by filing "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment" Fed. R. Civ. P. Rule 41(a)(1)(i). Defendants have not answered nor have they filed a motion for summary judgment. Rule 41(a)(1)(B) provides that "unless the notice or stipulation states otherwise, the dismissal is without prejudice."

Accordingly, the court **ADOPTS** the report and recommendation as the opinion of the court, and plaintiff's claims are **DISMISSED** without prejudice. The pending motions for more definite statement (docs 2, 21) and the pending motions to dismiss (docs. 19, 22, 31, 32) are **DENIED** as **MOOT** as recommended.

DONE this the 24th day of December, 2008.

s/ **Kristi K. DuBose**
KRISTI K. DUBOSE
UNITED STATES DISTRICT JUDGE